

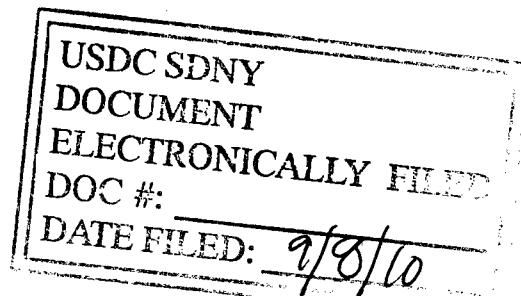
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August 31, 2010

BY FACSIMILE

The Honorable Barbara S. Jones
 United States District Court
 Southern District of New York
 500 Pearl Street
 New York, NY 10007-1312



Roule v. Mitchell, et al., No. 10-CV-5009 (BSJ)

Dear Judge Jones:

We represent Plaintiff Christopher Roule in the above-captioned matter. We write briefly in response to Defendants' letter to the Court of this morning.

Defendants moved to dismiss the Complaint on August 3, 2010. Plaintiff's opposition to that motion was due on August 27, 2010. August 27 also was the last day for Plaintiff to amend the complaint as of right pursuant to Federal Rules of Civil Procedure 15(a)(1) and 6(d). Faced with the coincidentally simultaneous deadlines, Plaintiff filed an Amended Complaint and opposed the pending motion to dismiss on August 27.

There is nothing "procedurally improper" about this. When a party amends a pleading during the pendency of a motion to dismiss, the court may "den[y] the motion as moot [or] consider[] the merits of the motion in light of the amended complaint." *Newmarkets Partners LLC v. Oppenheim & Cie*, 638 F. Supp.2d 394, 405 (S.D.N.Y. 2009); *Illiano v. Mineola Union Free School District*, 585 F. Supp.2d 341, 349 (E.D.N.Y. 2008). If, as Defendants maintain, the Amended Complaint moots Plaintiff's motion to dismiss, Defendants can withdraw their motion with prejudice. Until they do so, their motion to dismiss remains pending, and any obligation to answer the Amended Complaint is stayed pursuant to Federal Rule of Civil Procedure 12(a)(4).

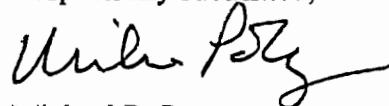
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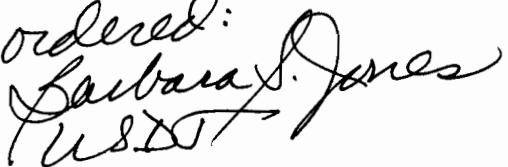
Because the procedural posture is clear, we respectfully submit that no order is necessary. Pursuant to the Court's scheduling order, Defendants' reply brief is due September 10, 2010, although we have no objection to extending that date to September 17, 2010.

Respectfully submitted,



Michael R. Potenza

The August 3, 2010 motion to dismiss
the Complaint filed on June 28, 2010
is dismissed as moot. The defendant
shall submit a motion to dismiss
the Amended Complaint, filed on
August 27, 2010 or before September 28,
2010. Plaintiff's opposition shall be
due on or before October 19, 2010.
Any reply is due on or before
Oct. 26/2010.

So ordered:

U.S.D.T.

9-8-10